ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

A.D. 1858.

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No. 16.

An Act to amend the Real Property Act.

[Assented to, 24th December, 1858.]

WHEREAS an Act was passed in the twenty-first year of Her present Majesty Queen Victoria, numbered 15, and intituled "An Act to simplify the Laws relating to the transfer and encumbrance of freehold and other interests in Land;" and it is expedient to amend the said Act—Be it therefore Enacted, by the Governor-in-Chief, of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. In referring to this Act it shall be sufficient to use the expression "The Real Property Law Amendment Act."

2. From and after the commencement of this Act certain portions of the said Act, No. 15 of 21st Victoria, being the sections or parts of sections specified or recited as follows, shall be and are hereby repealed, that is to say—the sections numbered 14, 15, 16, 17, 24, 27, 29, 31, 33, 34, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 63, 66, 68, 69, 70, 72, 73, 77, 84, 86, 88, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 115, 118, 122; part of section numbered 3, as follows, that is to say—the words "or Bill of Trust;" also, the words "Instrument" shall mean and include any land grant, certificate of title, or other document in writing, relating to the transfer, encumbrance, or other dealing with land," part of section numbered 23, as follows, that is to say—the words "hereinbefore directed to be published;" part of section numbered 81, as follows, that is to say—in rule 3, the words "Whenever the power contains a specification of the place or places at which, and a limit of time within which,
which, the sale is to be exercised;" and in rule 7, the words "with the sanction of the Lands Titles Commissioners;" part of section numbered 99, as follows, that is to say — the words "with the consent of the Lands Titles Commissioners;" part of section 114, as follows, that is to say—the words "shall be on a scale of not less than one inch to the chain, and;" and also the schedules to the said Act marked respectively E, F, K, N, J and T.

3. The enacting sections of this Act, numbered 4 to 93 inclusive, and also sections numbered 95 and 96, shall be read as forming portion of the said Act, and shall have the same force and effect that would have been given to them had they been embodied in the said Act at the passing thereof, and the sections hereby repealed, omitted therefrom.

4. The word "instrument" shall mean and include any land grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate, or exemplification of will, or any other document, in writing, relating to the transfer, or other dealing with lands.

5. The oath following, shall be taken before one of the Judges of the Supreme Court, by the Registrar-General, and by each Deputy Registrar-General, after the passing of this Act; and by every Registrar-General and Deputy Registrar-General to be hereafter appointed, before entering upon the execution of his office—

I, A. B., do solemnly swear, that I will faithfully, and to the best of my ability, execute and perform the office and duties of Registrar-General, or Deputy Registrar-General, for the Province of South Australia, according to the provisions of the Real Property Act. So Help me God.

6. The Registrar-General may, upon such evidence as shall appear to him sufficient in that behalf, correct errors in entries made, and supply entries omitted to be made under the provisions of this Act: Provided always, that in the correction of any such entry, he shall not erase or render illegible the original entry; and shall, on correcting or supplying any entry, affix his initials thereto; and every correction so made, and omission so supplied, shall have the like validity and effect as if such error had not been made, or such entry omitted, except as regards any assurance or instrument which may have been entered in the Register-book, previously to the actual time of correcting the entry or supplying the omitted entry. He may enter caveat on behalf of any person who shall be under the disability of infancy, coverture, lunacy, unsoundness of mind, or absence from the Province, or on behalf of Her Majesty, Her heirs, or successors, to prohibit the transfer or dealing with any land belonging or supposed to belong to any such persons as hereinbefore mentioned.

7. Land, in the said Province, the grants of which may have been signed prior to the day appointed for this Act to come into operation, (whether
(whether such land shall constitute the entire or only part of the land included in any grant), may be brought under the operation of this Act in the following manner, that is to say—the Registrar-General shall receive applications, in the form of the Schedule hereto annexed, marked I, or in words to that effect, for bringing land under the operation of this Act, if made by any of the following persons, that is to say—

By any person (claiming to be the person) in whom the fee simple of the land is vested in possession, either at law or in equity, and not being a mortgagee: Provided that, wherever trustees seised in fee simple have no express power to sell the land which they may seek to bring under the operation of this Act, the person claiming to be beneficially entitled for the first life-estate, or other greater estate than a life-estate, in the said land, shall consent in such application.

By any person claiming to have contracted to purchase the fee of any land, but not having obtained a conveyance of the said land: Provided that the vendor of the said land shall consent in such application.

By any person claiming to be entitled beneficially to land for a life-estate, or a greater estate than a life-estate, in possession.

By any married woman beneficially entitled to land for a life-estate, or a greater estate than a life-estate, in possession: Provided that the husband of such married woman shall consent in such application.

By the father (if he shall be living), or (if the father shall be dead) by the mother, or other guardian of any minor, in the name of such minor.

By the committee or guardian of any lunatic or person of unsound mind, in the name of such lunatic or person of unsound mind.

Provided always, that the Registrar-General shall not receive such application from any person claiming to be entitled to an undivided share of any land, unless the persons who shall appear to be entitled to the other undivided shares of the said land shall join in such application with a view to bringing the entirety of the said land under the operation of this Act; nor shall the Registrar-General receive any application from the mortgagor of any land subject to mortgage to bring such land under the operation of this Act, unless the mortgagee shall consent in such application.

8. And such applicant shall, at the time of making his application, deposit with the Registrar-General all instruments in his possession, or under his control, constituting, or in any way affecting his title to such land, and also, if required, an abstract of title, in which he shall set forth and describe every instrument constituting or in any way affecting his title to such land, with the names and so far as shall be within his knowledge the addresses of all persons, if any, seised
seised or possessed of any estate or interest in such land at law or in equity, in possession or in futurity, or expectancy, whether a life estate, or of a greater or less description than a life estate, and shall make and subscribe a declaration to the truth of such abstract, or if such applicant be the sole and only person having estate or interest in such land, then he shall make and subscribe a declaration to that effect.

9. Upon the receipt of such application the Registrar-General shall refer the same to the Lands Titles Commissioners for their consideration, and if it shall appear to such Commissioners that the applicant proprietor is the original grantee of the land in respect to which application is made, and that such land has been granted on or subsequent to the first day of March, one thousand eight hundred and forty-two, and that no sale, mortgage, or other encumbrance or transaction in any way affecting the title to such land has at any time been registered in the said Province, then, and in such case it shall be lawful for such Commissioners to direct the Registrar-General to bring such land under the operation of this Act forthwith; and if it shall appear to the satisfaction of the said Commissioners that the land referred to in such application was granted prior to the first day of March, 1842, or that the title of the applicant to such land has not been derived by transmission, and that every mortgage, encumbrance, or beneficial interest affecting such title has been released and satisfied, or if any such mortgage, encumbrance, or interest remains unsatisfied, that the parties interested therein are also parties to such application, then and in any such case the said Commissioners shall direct the Registrar-General to cause notice of such application to be advertised, once in the South Australian Government Gazette, and three times in at least one newspaper published in the City of Adelaide, and shall further limit and appoint a time not less than one month nor more than twelve months from the date of the advertisement in the South Australian Government Gazette, upon or after the expiration of which the Registrar-General shall, unless he shall in the interval have received a caveat forbidding him so to do, proceed to bring such land under the operation of this Act: But if it shall appear to the satisfaction of the said Commissioners that the applicant's title to such land has been derived by transmission, or that any parties interested in any unsatisfied mortgage or encumbrance affecting the title to such land, or any other party, beneficially interested therein, are not parties to such application, or that the evidence of title set forth by such applicant proprietor is imperfect, it shall be lawful for such Commissioners to direct the Registrar-General to reject such application altogether, or, at their discretion, to direct the Registrar-General to cause notice of such application to be published in the South Australian Government Gazette, and in the London Gazette, and in the Official Gazettes of each of the Colonies of New South Wales, Victoria, Tasmania, and New Zealand, or in any one or more of such Gazettes, and the said Commissioners shall specify the number of times, and at what intervals,
intervals, such advertisement shall be published in each or any of such Gazettes, and shall also limit and appoint a time, not less than two months nor more than three years from the date of the first of such advertisements in the South Australian Government Gazette, upon or after the expiration of which, it shall be lawful for the Registrar-General to bring such land under the operation of this Act, unless he shall in the interval have received a caveat, forbidding him so to do.

10. The Registrar-General shall, under such direction as aforesaid, or under any order of the Supreme Court, cause notice to be published in such manner as by such direction or order may be prescribed, that application had been made for bringing the land therein referred to, under the operation of this Act; and shall also cause copy of such notice to be posted in a conspicuous place in his office, and in such other places as he may deem necessary; and shall proceed, by notice, published in the South Australian Government Gazette, to bring the land referred to in such application, under the provisions of this Act, unless within the time limited in such direction, or under any order of the Supreme Court, he shall have received a caveat, as hereinafter described, forbidding him so to do.

11. So soon as any land has been brought under the operation of this Act, the Registrar-General shall make out and deliver to the applicant proprietor a certificate of title to the same, in form or to the effect hereinafter described, and every such certificate of title shall contain a reference to the original grant of such land, and the Registrar-General shall stamp as cancelled every instrument of title deposited by such proprietor, when making his application: Provided that, if any grant or other instrument so deposited shall relate to or include any property, whether personal or real, other than the land included in such certificate of title, then the Registrar-General shall endorse on such grant or other instrument a memorandum setting forth that the said grant or instrument is cancelled, in so far only as relates to the land included in such certificate of title, and shall return such grant or other instrument to such proprietor, otherwise he shall retain the same in his office: Provided, also, that the powers or authorities of the husband of any married woman, or of the guardian or Committee of any minor, lunatic, or person of unsound mind, shall in no wise be altered or abridged, in consequence of the issuing of any certificate of title in the name of such married woman, minor, lunatic, or person of unsound mind.

12. In case an applicant proprietor shall die in the interval between the date of his application to bring land under the operation of this Act, and the date when he shall be entitled to receive a certificate of title to such land, the certificate of title shall be issued in the name of such applicant proprietor, unless the Registrar-General shall have received notice in writing of the death of such applicant proprietor from his legal personal representative, heir, or devisee; and such land shall devolve in like manner as if the certificate of title had been issued to the applicant proprietor prior to his death.

13. Upon
13. Upon receipt of such notice of the death of an applicant proprietor dying as hereinbefore is mentioned, the Registrar-General may, upon like proof as is required to be made before him in the case of transmission by the death of the registered proprietor of any land, issue a certificate of title to the legal personal representative of such deceased proprietor, or other person legally entitled to receive certificate of title for such land under the provisions of this Act, unless he shall have previously received a caveat forbidding the issue of such certificate of title, and the caveator shall in such case take such proceedings as shall be necessary for establishing his right or claim to the estate, or interest claimed by him; and such caveat and the proceedings thereunder shall be subject to the provisions in this Act provided for the case of caveats forbidding the registration of transfers, transmissions, or other dealings in land under the operation of this Act.

14. Whenever a certificate of title shall have been issued to a proprietor in respect of a life estate, or any other estate less than an estate in fee simple, in land under the operation of this Act, the person entitled as remainderman to the said land, may apply to the Registrar-General to be entered in the register-book as a remainderman, and the Registrar-General shall thereupon, cause the title of such applicant to the estate or interest claimed by him to be investigated; and shall cause advertisements to be published in manner hereinbefore prescribed for the case of bringing land under the operation of this Act, and shall proceed to enter the name of such applicant on the register-book, as remainderman of the estate or interest to which he shall appear to be entitled, unless caveat, forbidding such entry, shall be received by him within the time for that purpose limited in such direction or by any order of the Supreme Court; and the Registrar-General shall endorse upon the certificate of title of such land, if produced to him for that purpose, a memorandum, setting forth that such applicant had been entered in the register-book as such remainderman, with the day and hour in which such entry had been made; and the Registrar-General shall in every such case receive the same fees and payments, including the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the operation of this Act.

15. Every remainderman and every person deriving, through a remainderman, registered as such in the register-book, shall, thereafter transfer, mortgage, encumber, or otherwise deal with the estate or interest, in respect to which he is so registered, in manner and by the use of the instruments and forms by this Act, prescribed in each case for the transfer, mortgage, encumbrance, and other dealing with land, under the operation of this Act, and not otherwise; and the Registrar-General shall enter the particulars of every memorandum of sale, bill of mortgage, bill of incumbrance, or other instrument duly executed by such remainderman, or person deriving through a remainderman, affecting the estate or interest in respect to which he is registered in the register-book, in manner hereinafter prescribed for
for the case of transfers, mortgages, encumbrances, and other dealings in land, under the operation of this Act: Provided always that nothing herein contained shall be construed to invalidate any deed, conveyance, or assurance, which a remainderman may have executed in respect to his estate or interest in such land prior to his being entered as such remainderman in the register-book.

16. Upon proof, to the satisfaction of the Registrar-General, that the life estate, or other less estate than an estate in fee simple, in respect of which a certificate of title of land shall have been issued to any person by the Registrar-General, is determined, or has become vested in the person entitled to the said land for the estate next in remainder, or that a purchaser is absolutely entitled to the said land for a present estate in fee simple in possession, it shall be lawful for the Registrar-General to cancel the existing certificate of title of such land, and, in lieu thereof, to issue such new certificate of title of the said land as the nature of the case and other circumstances may render necessary; and the Registrar-General shall, in such case, enter in the register-book, and on the certificate of title, when delivered up, the particulars by this Act prescribed to be entered in the case of canceling a certificate of title consequent on a transfer or transmission: Provided also, that previous to issuing any such new certificate of title of such land as hereinbefore mentioned, the Registrar-General may, require the title of the person claiming to be entitled in remainder to the said land to be investigated, and direct advertisements to be published in any such manner as is hereinbefore prescribed for the case of applications made for the purpose of bringing land under the operation of this Act; and shall receive the same fees and payments, including the sum payable to the assurance fund, as are required to be paid by persons applying to bring land under the operation of this Act.

17. Two or more persons who may be registered as joint proprietors of an estate or interest in land under the operation of this Act, shall be deemed to be entitled to the same as joint tenants; and in all cases where two or more persons are entitled as tenants in common to undivided shares of or in any land, such persons shall be bound to receive separate and distinct certificates of title, or other instrument evidencing title to such undivided shares.

18. Every grant, certificate of title, memorandum of sale, or other instrument transferring, or in any way affecting land under the operation of this Act, shall be executed in duplicate, and the Registrar-General after registering the same shall retain in his office one original of every such instrument, and shall deliver the other to the person entitled thereto, and every land grant, and every certificate of title to such land shall be deemed and taken to be registered under the provisions and for the purposes of this Act so soon as the same shall have been marked by the Registrar-General with a folio and volume as embodied in the register book; and every memorandum of sale, or other instrument as aforesaid, shall be deemed to be so registered so soon as the particulars thereof shall have
have been entered in the register book in manner hereinafter described.

19. So soon as the particulars thereof shall have been entered in the register-book, every instrument drawn in any of the several forms provided in the Schedules to this Act, or in any form which the Registrar-General may deem it requisite and expedient to sanction for transferring, mortgaging, leasing, or otherwise dealing with land under the operation of this Act, or for creating, transferring, surrendering, or discharging any estate or interest in the said land, shall, for the purposes of this Act, be deemed and taken to be embodied in the said register-book as part and parcel thereof, and the estate or interest mentioned in such instrument as to be transferred or otherwise dealt with or affected, shall thereupon pass, and be vested in manner directed in such instrument, subject to such conditions and covenants as may therein be expressed, or as are by this Act declared to be implied in instruments of the like nature, and such instrument when so constructively embodied, as aforesaid, in the register-book, shall have equal validity and effect as any deed or instrument here-tofore executed and used for the purposes aforesaid, and shall create and impose the like obligations on the persons signing the same, and shall also continue in force for the like period of time as any deed or other instrument made to secure the payment of any specialty debt.

20. Notwithstanding any error or omission in the observance of any formality herein prescribed to be observed in bringling land under the operation of this Act, and excepting in the case of frauds, and so far as regards any wrong description of any land, or of its boundaries, or the omission or misdescription of any right-of-way or other easement, created in, or existing upon, any land under the operation of this Act, every certificate of title or entry in the register-book, signed by the Registrar-General, shall absolutely vest the estate or interest in the land therein mentioned, in the manner and to the effect expressed in such certificate of title or entry, and the registered proprietor of such estate or interest in the said land, shall be secure from eviction or disturbance or adverse claim, in respect of any estate, right, or interest in the said land, which is not declared in such certificate of title, or entry on the register-book, or in the instrument referred to in such entry.

21. Upon the first bringing of any land under the operation of this Act, whether by the alienation thereof from the Crown, or consequent upon the application of the proprietor thereof, as herein before provided, and also upon the registration of the title to any land under the provisions of this Act, derived through the will or intestacy of a previous proprietor, there shall be paid to the Registrar-General the sum of one halfpenny in the Pound sterling on the value of such land; and in the case of land brought under the operation of this Act by alienation from the Crown, the price paid for such land shall be deemed and taken to be the value thereof for the purpose of levying such sum of one halfpenny in the Pound, and in all other cases as aforesaid such value shall be ascertained by the oath or solemn affirmation of the applicant proprietor, or person...
person deriving such land by transmission: Provided always that if the Registrar-General shall not be satisfied as to the correctness of the value so declared or sworn to, it shall be lawful for him to require such applicant proprietor, or person deriving such land by transmission to produce a certificate of such value under the hand of a sworn appraiser, which certificate shall be received as conclusive evidence of such value for the purpose aforesaid.

22. Every memorandum of sale for the transfer of land under the operation of this Act, when duly executed, shall be produced to the Registrar-General, who shall thereupon enter in the register-book, the name, residence, and description of the vendor, or of each vendor, if more than one; the name, residence, and description of the purchaser, or of each purchaser, if more than one; the amount of the consideration money paid; the date of the memorandum of sale, and of its production, and such other particulars as the Registrar-General may deem necessary; and shall endorse on such memorandum of sale, and also on the duplicate grant or certificate of title, lease, or other instrument evidencing title to the estate or interest intended to be transferred, the fact of such entry having been made, with the date and hour thereof, and shall sign each such endorsement and shall affix his seal to such memorandum of sale, and the particulars of every such memorandum of sale shall be entered in the register-book in the order of the production thereof, and upon such entry being made by the Registrar-General, the land, or the estate or interest therein, as set forth and limited in such memorandum of sale as to be transferred, shall pass to and vest in the purchaser; and every memorandum of sale so endorsed and authenticated shall be received in all Courts of Justice, as sufficient evidence of the particulars therein set forth, and of their having been entered in the register-book in manner stated in such memorandum of sale.

23. Upon the sale or transfer of any estate or interest in land under the operation of this Act, the purchaser or transferee of such estate or interest shall not be entitled to call for the production of any memorandum of sale, or other instrument dated prior to the date of the existing certificate of title of such land, unless such instrument shall be entered in the register-book, and notified by memorandum on the duplicate of such certificate as an encumbrance, lien, or interest in, or affecting the said land.

24. Whenever any easement or any incorporeal right other than an annuity or rent charge, affecting any land under the operation of this Act, is created for the purpose of being annexed to, or used and enjoyed, together with other land under the operation of this Act, the Registrar-General shall enter in the register-book, the date of the memorandum of sale, or other instrument creating such easement or incorporeal right, the date of its production to him, the name, residence, and description of the grantor, and of the grantee, the amount of the consideration money, the nature of the incorporeal right or easement, and such other particulars as the Registrar-General may deem necessary.

25. If
If estate in fee simple be transferred certificate of title to be delivered up and cancelled so far as regards the portion of land transferred.

Fresh certificate to be issued to purchaser. A certificate for the balance, if any, unsold to be issued to proprietor when demanded, or to a registered transferee thereof.

Lands under the operation of this Act how leased.

25. If the memorandum of sale purports to transfer an estate in fee simple in the whole or in part of the land mentioned in any grant or certificate of title, the vendor shall (unless the grant or certificate of title shall be held by some registered mortgagee or encumbrancee, whose mortgage or encumbrance is not intended to be paid off and discharged out of the purchase-money) deliver up the grant or certificate of title of the said land; and the Registrar-General shall in such case enter on such grant or certificate of title a memorandum cancelling such grant or certificate of title, either wholly or partially, according as the memorandum of sale purports to transfer the whole, or part only, of the land mentioned in such grant or certificate of title, and setting forth the particulars of the transfer occasioning such surrender and cancelling.

26. The Registrar-General, upon cancelling any grant or certificate of title, either wholly or partially, pursuant to any such transfer, shall make out to the purchaser, or other registered transferee, a certificate of title to the land mentioned in such memorandum of sale, and every such certificate of title shall refer to the original grant of such land, and to the memorandum of sale or other instrument of transfer to the purchaser or other registered transferee thereof; and the Registrar-General shall retain every such cancelled or partially cancelled grant or certificate of title; and whenever required thereto by the proprietor of an unsold portion or balance of land included in any such partially cancelled grant or certificate of title, or by a registered purchaser or transferee of such portion or balance of land so included, or of any part thereof, shall make out to such proprietor, purchaser, or transferee a certificate of title for such balance of land, or for any part thereof, of which he is the proprietor, purchaser, or transferee.

27. When any land, under the operations of this Act, is intended to be leased or demised for a life or lives, or for any term of years exceeding three years, the proprietor shall execute a lease in form of the Schedule hereto annexed, marked C, or as near thereto as circumstances permit; and every such lease shall contain the same description that is given in the grant or certificate of title of the land, or such other description as may be necessary to identify such land; and shall be attested by a witness; and such lease, when so executed, together with the grant, certificate of title, or other instrument evidencing the title of such proprietor to an estate in such land, unless the Registrar-General shall dispense with the production of such grant, certificate of title, or other instrument, shall be presented to the Registrar-General, who shall record in the register-book the date and hour of such production to him, the date of the lease, the amount of rent or consideration money, the dates on which it is appointed to be paid, and the names and the descriptions of the lessor and of the lessee, and if right of purchase is intended to be granted in such lease, the amount of the purchase money, and the period within which the right may be exercised; and shall record the like particulars by memorandum on the grant, certificate of title, or other instrument
instrument, as aforesaid; and shall endorse on the lease a memorandum of the day and hour on which the said particulars were entered in the register-book; and shall authenticate such memorandum by signing his name and affixing his seal thereto; and, every lease bearing such memorandum, so authenticated, shall be received as evidence on behalf of the lessor and lessee named in the said lease, or other person claiming any estate or interest under the said lease, of all covenants, conditions, restrictions, and matters therein expressed or by this Act declared to be implied on the part of the lessor or lessee respectively.

28. In any such lease as aforesaid, a right to purchase the fee simple of the land thereby demised may be granted to the lessee by a stipulation to that effect expressed in such lease; and, in such case, the true amount of the purchase money to be paid by the lessee, the period within which such right may be exercised, and such other particulars as may be considered necessary for explaining the terms of such right of purchase, shall be stated on such lease; and, in case the lessee shall pay the purchase money stipulated, and otherwise observe his covenants expressed and implied in such lease, the lessor shall be bound to execute a memorandum of sale to such lessee of the said land, and the fee simple thereof, and to perform all necessary acts by this Act prescribed to be done for the purpose of transferring to a purchaser the said land and the fee simple thereof.

29. Upon the entry in the register-book of any lease, the land which is therein mentioned to be leased, shall be transferred to and shall vest in the lessee for the term or other estate in and by the said lease mentioned to be demised, and subject to the express and implied covenants, conditions, and restrictions contained in the said lease, and which are hereinafter declared to be implied on the part of the lessor and the lessee respectively; save and except so far as any such implied covenants and conditions are qualified or negatives by the said lease: Provided always that no lease of mortgaged or encumbered land, executed subsequently to the entry in the register-book, of any bill of mortgage or bill of encumbrance shall be valid and binding against the mortgagee or encumbrancer, unless such mortgagee or encumbrance shall have consented to such lease prior to the same being entered in the register-book.

30. Whenever any lease, or demise, which is required to be registered by the provisions of this Act, is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law, or under the provisions of any law at the time being in force in the said Province relating to Insolvent Estates, there shall be endorsed upon such lease, or on the counterpart thereof, the word "surrendered," with the date of such surrender; and the said endorsement shall be signed by the lessee and by the lessor, as evidence of the acceptance thereof, and shall be attested by a witness; and the Registrar-General shall thereupon enter in the register-book a memorandum recording the date of such surrender, and shall likewise endorse upon the lease a memorandum.
randum recording the fact of such entry having been made in the register-book, and upon such entry being so made in the register-book, the estate or interest of the lessee in such land shall vest in the lessor, or in such other person as, having regard to intervening circumstances, if any, the said land would have been vested if no such lease had ever been executed; and the production of such lease or counterpart bearing such endorsement and memorandum as here-inbefore mentioned, shall be sufficient evidence that such lease had been so surrendered.

Lands under this Act, how mortgaged or encumbered.

31. Whenever any estate or interest in land under the operation of this Act is intended to be charged or made security in favor of any mortgagee, the mortgagor shall execute a bill of mortgage in form of the Schedule hereto annexed marked D, or as near thereto as circumstances will permit, and whenever any such estate or interest as aforesaid is intended to be charged with, or made security in favor of any encumbrancer, for the payment of an annuity, rent charge, or sum of money, the encumbrancer shall execute a bill of encumbrance, in form of one or other of the Schedules hereto annexed marked respectively E and F, or as near thereto as circumstances will permit; and every such bill of mortgage or bill of encumbrance shall contain an accurate statement of the estate or interest intended to be mortgaged or encumbered, and such description as is given in the grant or certificate of title of the land in which such estate or interest is held, or such other description as may be necessary to identify such land, together with a statement of all mortgages and other encumbrances, if any, which may affect the said land, estate, or interest; and every such bill of mortgage or bill of encumbrance shall be attested by a witness, and every bill of mortgage or bill of encumbrance, so executed, together with the grant or certificate of title of such land, or as the case may be, the lease or other instrument evidencing the title of the mortgagor or encumbrancer to such estate or interest in the said land, shall be produced to the Registrar-General, who shall enter in the register-book the date and hour of such production to him, the date of the bill of mortgage or bill of encumbrance, the name, residence, and description of the mortgagor or encumbrancer and of the mortgagee or encumbrancer; and in the case of a bill of mortgage, the amount of the principal money secured, the rate of interest, and the date, if any, appointed for the redemption of such money, and the dates on which interest is appointed to be paid, or, in case of a bill of encumbrance, the amount of the annuity, rent charge, or sum of money intended to be charged or secured, the times appointed for the payment of such annuity, rent charge, or other sum of money, the rate of interest in case interest thereon shall be payable under the bill of encumbrance, and the events upon which such annuity, rent charge, or sum of money and interest shall become and cease to be payable; and the Registrar-General shall record the like particulars by a memorandum endorsed upon such grant or certificate of title, lease or other instrument of title; and shall also endorse upon such grant or certificate of title, lease, or other instrument, a memorandum stating the day and hour of the day in which the particulars of such mortgage or encumbrance.
brance had been recorded in the register-book; and upon such entry
being made as aforesaid in the register-book, the estate or interest in
the land referred to and described in such bill of mortgage or bill of
encumbrance shall be held by such mortgagor or encumbrancer, sub-
ject to and liable for the payment of the principal sum and interest.

32. Every bill of mortgage or bill of encumbrance shall be entered
by the Registrar-General in the register-book in the order of time in
which the same is produced to him for that purpose; and the Registrar-
General shall record by memorandum on such bill of mortgage or
bill of encumbrance, that the same has been entered by him, stating
the day and hour of such entry, and shall certify such memorandum
by signing the same and affixing his seal thereto, and every such bill
of mortgage or bill of encumbrance so certified, shall be received in
all Courts of Justice as sufficient evidence that the estate and interest
therein described had been so mortgaged or encumbered, as the case
may be, and of all other particulars therein contained; and bills of
mortgage and bills of encumbrance registered in respect to or affect-
ing the same estate, or interest in any land under the operation of
this Act, shall, notwithstanding any express, implied, or constructive
notice, be entitled in priority one over the other according to the date
at which each instrument is recorded in the register-book, and not
according to the date of each instrument itself.

33. In case default shall be made for the space of one calendar
month in payment of the principal money or interest, or any part
thereof secured by any registered bill of mortgage, or if default shall
be made in the observance of any covenant that may be expressed in
such bill of mortgage, or that is therein as against the mortgagor
hereinafter declared to be implied, or in case such default for the
space aforesaid shall be made in payment of the annuity, rent-charge,
principal-money, or interest, or any part thereof, respectively secured
or charged upon any land, by any registered bill of encumbrance, or
if default shall be made in the observance of any covenant that may
be expressed in such bill of encumbrance, the mortgagee or encum-
brane, after giving to the mortgagor or encumbrancer notice in writ-
ing to pay the money then due, or owing on such bill of mortgage or
bill of encumbrance, or to observe the covenants therein expressed
or implied, as the case may be, or after leaving such notice on the
mortgaged or encumbered land, or at the usual or last known place
of abode, in South Australia, of the mortgagor or encumbrancer, or
other person claiming to be then entitled to the said land, and after
such default in payment or observance thereof continuing for the fur-
ther space of one calendar month from the date of such notice, is
hereby authorized and empowered to sell the said land so mortgaged
or encumbered, or any part thereof, and all the estate and interest
therein of the mortgagor or encumbrancer, and either altogether, or
in lots, by public auction, or by private contract, or both such modes
of sale, and subject to such conditions as he may think fit, and to
buy in and resell the same without being liable for any loss occasioned
thereby, and to make and execute all such instruments as shall be
necessary
necessary for effecting the sale thereof, all which sales, contracts, matters, and things hereby authorized, shall be as valid and effectual as if the mortgagor or encumbrancer had made, done, or executed the same; and the receipt or receipts in writing of the mortgagee or encumbranceree shall be a sufficient discharge to the purchaser of such encumbered land, estate, or interest, or any portion thereof, for so much of his purchase money as may be thereby expressed to be received, and no such purchaser shall be answerable for the loss-
misapplication, or nonapplication, or be obliged to see to the applica-
tion of the purchase money by him paid, nor shall he be concerned to inquire as to the fact of any default, notice, or requisition having been made or given as aforesaid; and the purchase money to arise from the sale of any such land shall be applied, first, in payment of the expenses occasioned by such sale; secondly, in payment of the moneys which may then be due to the mortgagee or encumbrancee, and the surplus (if any) shall be paid to the mortgagor or encumbrancer, as the case may be.

34. The Registrar-General, in any such case as aforesaid, upon receipt of a memorandum of sale of such estate or interest so mort-
gaged or encumbered, signed by such mortgagee or encumbranceree, shall enter the particulars of such memorandum of sale in the register-book, and shall record the fact of such entry by endorsement on such memorandum of sale, and shall in other respects proceed in manner herein prescribed for the case of a transfer of a like estate or interest by the proprietor thereof; and every such transfer, when so recorded by the Registrar-General, shall be as valid and effectual to pass such estate or interest as if the memorandum of sale had been executed by the mortgagor or encumbrancer prior to the date of the execution of the bill of mortgage or the bill of encumbrance, as the case may be; and if such memorandum of sale shall purport to pass an estate in fee simple, and the existing grant or certificate of title be for that purpose surrendered to him, the Registrar-General shall make out and deliver to the purchaser a certificate of title to such land, having first endorsed thereon memoranda setting forth the particulars of all unsatisfied mortgages or other encumbrances, and of all leases, transfers, or other trans-
actions (if any) affecting such land, which shall appear to have been registered and recorded upon such grant or certificate of title so surrendered, and shall in all other respects proceed as hereinbefore is directed in the case of the sale of an estate in fee simple in land under the operation of this Act.

35. The payment of any sum of money by weekly instalments, or other periodical payments, may be secured on any land or on any estate or interest therein, by bill of mortgage, or bill of encumbrance, in the form or to the effect of either of the said Schedules D or B to this Act annexed, by varying such form, so as to express fully the terms and modes of payment of such sum of money: Provided also, that the period of time hereinbefore limited as the period after ex-
piration of which it shall be lawful for a mortgagee or encumbranceree to
to sell an estate pledged as security, in the event of default made in payment of interest or principal, or of any annuity or rent charge, or in consequence of the non-fulfilment of any covenant, may, by condition expressed in any such bill of mortgage, or bill of encumbrance, be extended or shortened, and, notwithstanding such variations in such form, the like covenants, rights, powers, and obligations, shall be implied thereunder and thereby, both against the mortgagor or encumbrancer, and the mortgagee or encumbrancee, as would be implied if no such variation had been made in the form of such Schedule.

36. Every bill of mortgage and bill of encumbrance shall be construed and have effect only as a security for the sum of money, annuity, or rent charge intended to be thereby secured, and shall not operate or take effect as a transfer of the land, estate, or interest intended to be thereby charged with the payment of any money; but it shall be lawful for the mortgagee or encumbrancee, upon default in payment of the money secured by such bill of mortgage or bill of encumbrance, or any part thereof to enter into possession of the mortgaged or encumbered land, by receiving the rents and profits thereof, or to distrain upon the occupier or tenant of the said land, under the power to distrain hereinafter contained: Provided also, that it shall be lawful for any registered mortgagee or encumbrancee, whenever any money, annuity, or rent charge shall have become in arrear, to bring an action of ejectment, to obtain possession of the said land, either before or after entering into the receipt of the rents and profits thereof, or making any distress as aforesaid; and either before or after any sale of such land shall be effected, under the power of sale given or implied in such bill of mortgage or bill of encumbrance; and any such registered mortgagee or encumbrancee shall be entitled by suit or other proceedings in equity to foreclose the right of the mortgagor or encumbrancer, to redeem the said mortgaged or encumbered lands.

37. Besides his personal remedy against the mortgagor or encumbrancer, as the case may be, every mortgagee or encumbrancee, for the better recovery of any arrears of interest which may be due under any bill of mortgage, or of the arrear of any annuity or rent charge, or any interest which may be due under any bill of encumbrance, shall be entitled after such interest, annuity, or rent charge shall have become in arrear for twenty-one days; and after application for the payment thereof shall have been made, by, or on behalf of the mortgagee or encumbrancee, as the case may be, to the occupier or tenant of any land mentioned in the said bill of mortgage or bill of encumbrance, to enter upon the said lands, and distrain and sell the goods and chattels of such occupier or tenant of the said land, and to retain thereout, the moneys which shall be so in arrear, and all costs and expenses occasioned thereby: Provided that no lessee or tenant, occupying such land, shall be liable to pay to any mortgagee or encumbrancee of such land, a greater sum than the amount
amount of rent which, at the time of making such distress may be
then due from such lessee or tenant to the mortgagor or encum-
brancer, or to the person claiming the said land, under the mortgagor
or encumbrancer.

38. Whenever any lease shall have been sold by a mortgagee or
encumbrancee of the said lease, under the power of sale given to
him by this Act, the said lease may be transferred to the purchaser
by the endorsement on the said lease, signed by the mortgagee or
encumbrancee in manner hereinafter provided in case of the transfer
of a registered lease, or by such other form as the Registrar-General
shall approve of; and the Registrar-General, at the time of record-
ing on the said lease, in the manner hereinafter provided, the trans-
fer thereof to the purchaser, shall cancel the said bill of mort-
gage or bill of encumbrance, and shall enter in the register-book the
particulars of such transfer and of such cancellation; and shall
also, if the same shall be presented to him for that purpose, endorse
on the grant or certificate of title of the land mentioned in such
bill of mortgage or bill of encumbrance, a memorandum, stating
that such mortgage or encumbrance had been discharged or had
cess to exist, and the date on which such last-mentioned entry
had been made in the register-book; and every such transfer, when
so entered in the register-book by the Registrar-General, shall be as
valid and effectual to pass the said leasehold estate or interest as if
the transfer of the said lease had been executed by the mortgagor
or encumbrancer prior to the date of the execution of the bill of
mortgage or bill of encumbrance, as the case may be.

39. Any mortgagee or encumbrancee of leasehold land, under the
operation of this Act, or any person claiming the said land as a
purchaser or otherwise, from or under such mortgagee or encum-
brancee, shall, after entering into possession of the said land, or the
rents and profits thereof, become and be subject and liable to the
lessee of the said land or the person for the time being entitled to
the said lessor's estate or interest in the said land, to the same extent
as the lessee or tenant, under the said lease of such land, was subject
to and liable for prior to such mortgagee, encumbrancee, or other
person entering into possession of the said land or the rents and
profits thereof.

40. Upon the production of any such bill of mortgage or bill of
encumbrance, having thereon a receipt for the entire or any part of
the mortgage money or encumbrance money thereby secured, signed
by the mortgagee or encumbrancee, and attested by a witness, the
Registrar-General shall make an entry in the register-book, noting
that the said mortgage or encumbrance is discharged wholly or
partially, as the case may require; and upon such entry being so
made in the register-book, the estate or interest which by such bill
of mortgage or bill of encumbrance had been pledged or subjected
as security for such loan or sum of money, shall cease to be subject
to or liable for the same, or, as the case may be, for the part thereof,
noted in such entry as discharged pursuant to such entry as aforesaid: And, in case any annuity or sum of money shall be secured by any such bill of encumbrance during the life of any encumbranceree or other person, or contingent upon the occurrence of some event or circumstance, the Registrar-General, on the production of such bill of encumbrance, together with proof of the death of such annuitant, or other person, or together with proof of the occurrence of the event or circumstance upon which, in accordance with the provisions of such bill of encumbrance, such annuity or sum of money shall cease to be payable, as the case may be, and upon proof of all arrears of the said annuity and interest or money having been paid, satisfied, or discharged to the said annuitant, or other person entitled to the same, shall make an entry in the register-book, noting that such annuity or sum of money is satisfied and discharged, and shall cancel such bill of encumbrance; and, upon such entry being made in the register-book, the estate or interest which had been pledged or subjected as security for the payment of such annuity or sum of money, shall cease to be subject to or liable for the same, or any charges incident thereon: And the Registrar-General shall, in any or either such case as aforesaid, endorse on the grant, certificate of title, or other instrument evidencing the title of the mortgagor or encumbrancer to the estate or interest mortgaged or encumbered, a memorandum of the date on which such entry as aforesaid was made by him in the register-book, whenever such grant, certificate of title, or other instrument, shall be presented to him for that purpose.

41. It shall be lawful for the Registrar-General, in case any mortgagee shall be absent from the Province, or in case there shall be no person authorized to give a receipt to the mortgagor for the mortgage money, at or after the date appointed for the redemption of any mortgage, to receive such mortgage money, with all arrears of interest then due thereon, in trust for the mortgagee or other person entitled thereto; and the Registrar-General shall thereupon make an entry in the register-book, discharging such mortgage, stating the day and hour on which such entry is made, and such entry shall be a valid discharge for such mortgage, and shall have the same force and effect as is hereinbefore given to a like entry when made upon production to the Registrar-General of the bill of mortgage with the receipt of the mortgagee; and the Registrar-General shall, if demanded, give to the mortgagor a receipt for the money so paid to him in trust, and shall endorse on the grant, certificate of title, or other instrument as aforesaid, and also on the bill of mortgage, whenever those instruments shall be brought to him for that purpose, the several particulars hereinbefore directed to be endorsed on each of such instruments respectively: Provided always, that if it shall be shown to the Registrar-General that any absent mortgagee has a duly constituted attorney or agent in the Province, authorized to receive such mortgage money and interest, the Registrar-General shall not receive the aforesaid mortgage money and interest in trust for such absent mortgagee; provided also, that after payment to the Registrar-General

Mortgage money may be paid to Registrar-General, if mortgages be absent from the Colony, and mortgage discharged.
Registrar-General of any mortgage money and interest, under the provisions hereinbefore contained, the mortgagee entitled thereto shall not recover from the Registrar-General, or the Treasurer of the Province, any further sum or interest, in respect of the said mortgage, than the sum which shall have been so received by the Registrar-General in trust for such mortgagee, and upon and after the date of such payment to the Registrar-General, the interest upon such mortgage shall cease to run or accrue.

42. In every instrument creating or transferring any estate, interest, or charge for valuable consideration under the provisions of this Act, there shall be implied the following covenants by the party creating or transferring such estate, interest, or charge, that is to say—That such covenanting party will, at the cost of the party requiring the same, do all such acts and execute all such instruments as in accordance with the provisions of this Act may be necessary to give effect to all covenants, conditions, and purposes expressly set forth in such instrument as aforesaid, or as are by this Act declared to be implied against such covenanting party in any such instrument.

43. In every lease there shall also be implied the following powers in the lessor, that is to say—

(1.) That he may, by himself or his agents, at all reasonable times, enter upon the demised property, and view the state of repair thereof, and may serve upon the lessee, or leave at his last, or usual place of abode in this colony or upon the demised property, a notice, in writing, of any defect, requiring him, within a reasonable time to be therein prescribed, to repair the same:

(2.) That in case the rent, or any part thereof, shall be in arrear for the space of six calendar months, or in case default shall be made in the fulfilment of any covenant, whether expressed or implied in such lease on the part of the lessee, and shall be continued for the space of six calendar months, or in case the repairs required by such notice as aforesaid shall not have been completed within the time therein specified, it shall be lawful for such lessee to re-enter upon and take possession of such demised premises.

44. In any such case the Registrar-General, upon proof to his satisfaction of re-entry and recovery of possession by a lessor by any proceeding in law, shall note the same by entry in the register-book, and the estate of the lessee in such land shall thereupon determine, but without releasing him from his liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar-General shall cancel such lease if delivered up to him for that purpose.

45. Whenever the registered proprietor of any land, under the operation of this Act, or of any estate or interest in such land, is desirous of vesting the said land, estate, or interest in any trustees,
it shall be lawful for such proprietor to execute an instrument in form of the Schedule hereto annexed marked \( K \), or as near thereto as circumstances will permit, nominating trustees of the said land, estate, or interest; and every such nomination of trustees shall contain an accurate statement of the estate or interest intended to be vested in any trustees, and such description as is given in the grant or certificate of title of the land in which such estate or interest is held, or such other description as may be necessary to identify such land, and shall be attested by a witness; and every nomination of trustees so executed, together with the grant or certificate of title of such land, or as the case may be, the lease or other instrument proving the title of the registered proprietor to such land, estate, or interest, shall be produced to the Registrar-General, who shall enter in the register-book, the date of the nomination of trustees, and the date of its production, the name, residence, and description of the person nominating the trustees, and the names, residences, and descriptions of the persons who are nominated trustees, and such other particulars as the Registrar-General may deem necessary; and shall endorse on such nomination of trustees, and also on the grant, certificate of title, lease, or other instrument evidencing title to the estate, or interest intended to be vested in the said trustees, unless the Registrar-General shall see reason to dispense with the production thereof, the fact of such entry having been made, with the date and hour thereof, and shall sign each such endorsement, and shall affix his seal to such nomination of trustees, and upon such entry being made by the Registrar-General, the land, or the estate, or interest therein, as set forth and limited in such nomination of trustees, shall pass to and vest in the said trustees.

46. The trusts which are intended to be declared of any land, estate, or interest vested in trustees as hereinbefore mentioned, may be declared either by a Schedule to the aforesaid instrument effecting such nomination of trustees, or by any separate instrument or deed. Whenever the said trusts are declared by a separate instrument or deed, the same may include as well, land under the operation of this Act, as land which is not under the operation of this Act, provided that the description of the several parcels of land contained in such separate instrument or deed shall sufficiently distinguish the land which is under the operation of this Act, from the land which is not under the operation of this Act; and whenever such trusts are declared by a separate instrument, a duplicate or attested copy of such instrument shall be deposited with the Registrar-General for the purpose of safe custody and reference; but such duplicate or attested copy shall not be registered.

47. Whenever land, under the operation of this Act, shall be settled, or shall become vested in trustees upon any trust, whether express, implied, or constructive, the Registrar-General shall not make any entry of the said trusts in the register-book; and the trustees, after the entry in the register-book of the nomination of trustees, in manner hereinbefore provided, shall, notwithstanding any trust affecting the said land, be entitled to sell, transfer, mortgage, or otherwise

\[ \text{Trusts may be declared either by Schedule to instrument of nomination, or by separate deed or instrument.} \]

\[ \text{Instrument declaring trusts to be deposited, but not registered.} \]

\[ \text{No entry of trusts to be made in register-book.} \]

\[ \text{Trustees to receive certificate of title, and deal with same as if beneficial owners.} \]
otherwise deal with the said land in the like manner as if the said trustees had been the beneficial owners of the said land; and in case the fee simple of such land be so settled or vested in trust, such trustees shall be entitled to receive a certificate of title for the same.

48. It shall be lawful for the registered proprietor of any land under the operation of this Act, or any estate or interest in such land, to insert the words "no survivorship" in any instrument intended by such registered proprietor to operate as a nomination of trustees; and whenever such words shall be so inserted, it shall not be lawful for any less number of trustees than the number named in the aforesaid instrument, to sell, transfer, mortgage, or otherwise deal with the said land, estate, or interest, without obtaining the sanction of the Supreme Court or a Judge thereof, by an order, on motion, or petition made under the provisions of this Act, which application shall be made by or on behalf of some person beneficially interested in the aforesaid land, estate, or interest; and it shall be lawful for the said Court or Judge, by such order as aforesaid, to give directions for the appointment of any new trustee or trustees in the place of any former trustee or trustees, and for the investment or application of such purchase-money or mortgage-money as the said Court or Judge may think fit for the benefit of the persons beneficially interested in the aforesaid money; and such order, accompanied by the memorandum of sale, bill of mortgage, or instrument purporting to transfer or affect the said land, estate, or interest, shall be deposited with the Registrar-General, who shall thereupon make the entry in the register-book, which under the provisions of this Act, is required for the purpose of giving effect to the said memorandum of sale, bill of mortgage, or other instrument, as the case may be; and the receipt of such trustee, or (except in cases where the words "no survivorship" have been entered in the register-book, as hereinafter provided) the receipt of the surviving trustees or trustee, or of the legal personal representative of the last surviving trustee, shall be a sufficient discharge to any purchaser or mortgagee of such land or any part thereof, whether such purchaser or mortgagee had notice or not of the said trusts; and the purchaser or mortgagee of the said land shall not be bound to see to the application of the money paid, upon receiving such receipt: Provided that nothing herein contained, shall prevent any less number of trustees than the number which may be named in the aforesaid instrument, operating as a nomination of trustees, from filling up any vacancy which may arise in the number of the aforesaid trustees, by nominating any other person to co-trustee with the acting or continuing trustees under the aforesaid instrument; and such new trustee may be nominated by any instrument in form of the Schedule hereto annexed, marked F, or as near thereto as circumstances will permit, with the addition of the words "no survivorship;" and whenever the vacancy in the number of the said trustees shall be so filled up by the appointment of any new trustee the Registrar-General shall enter in the register-book such particulars as are hereby required to be entered in the register-book in the case of any instrument intended to operate as a nomination of trustees; and thereupon, the
the new trustee shall have the like estate, interest, power, and authority, as if such new trustee had been originally nominated a trustee by the registered proprietor of such land, estate, or interest.

49. Whenever the words "no survivorship" shall be written upon any instrument intended to operate as a nomination of such trustees, the Registrar-General shall, during the existence of such trust, cause the words "no survivorship" to be written on every certificate of title of land issued to such trustees, and also on the duplicate of every such certificate bound up in the register-book.

50. It shall be lawful for the registered proprietor of any estate or interest in land under the operation of this Act, whether such land shall be of the nature of real or personal property, or for any mortgagee or incumbrancer thereof, by any of the forms of instruments of transfer, or other assurance provided by this Act, and containing such alterations, if any, as may be deemed necessary in the said forms of instruments, to transfer or otherwise assure and vest such land, estate, or interest, or the money secured by any bill of mortgage, or bill of encumbrance, or any part thereof to and in himself, jointly with any other person or persons; and it shall not be necessary, for the purpose of any such transfer or assurance, or for the purpose of vesting such land, estate, interest, or money in such registered proprietor jointly with any other person or persons, to limit any use or execute any reassignment; but the said transfer or assurance by such registered proprietor to himself, and another, or others, shall vest the said land, estate, or interest, or money, in such registered proprietor jointly with any other person or persons, according to the intent and meaning appearing in such instrument, and thereby expressed.

51. Whenever any registered proprietor of land, under the operation of this Act, shall appear to the Supreme Court to be a trustee of such land, within the intent and meaning of "The Trustee Act, No. 7, of 1855," and any order shall be made in the premises by the Supreme Court, or a Judge thereof, the Registrar-General, on being served with an office copy of such order, shall proceed to carry out and give effect to the same, by entering in the register-book the date and hour of the production of the said order, the date of the said order, and the name, residence, and description of the person in whom the said order shall purport to vest the said land; and, until such entry as aforesaid shall be made in the register-book, the said order shall have no effect or operation in transferring or otherwise vesting the said land in the person named in the said order; and the Registrar-General shall also record the like particulars upon the grant, certificate of title, or other instrument evidencing title to the said land, in case the same shall be produced to him for that purpose.

52. Wherever

The words "no survivorship" to be written on certificate of title, if on vesting order.

Proprietor may vest estate jointly in himself and others without limiting any use or executing any reassignment.

Registrar-General to carry out order of Supreme Court, vesting trust estate.
52. Wherever a person entitled to or interested in land as a trustee for some other person, would be entitled, under the last preceding clause, to bring or defend any action of ejectment in his own name for the recovering the possession of land under the operation of this Act, such person shall be bound to allow his name to be used as plaintiff or defendant in such action of ejectment by any beneficiary or person claiming an estate or interest in the said land: Provided, nevertheless, that the person entitled or interested as such trustee of the said land shall in every such case be entitled to be indemnified in like manner as a trustee would before the passing of this Act have been entitled to be indemnified in a similar case of his name being used in any such action or proceeding by his cestuique trust.

53. If any estate or interest in land under the operation of this Act, or any mortgage, or encumbrance affecting such land, shall become transmitted, in consequence of the death, bankruptcy, or insolvency of the registered proprietor thereof, such transmission shall be authenticated by a declaration in writing, or in such other manner as the Registrar-General may require; and every such declaration shall state the manner in which and the party to whom such land shall have been so transmitted, and shall be made and signed by the person claiming to be entered in the register-book as registered proprietor of such estate, or interest, mortgage, or encumbrance; or, in case the person claiming as aforesaid shall be an infant, lunatic, or person of unsound mind, then such declaration as aforesaid shall be made and signed by the guardian or committee of such person claiming as aforesaid, or by some credible person acting for and on behalf of such person claiming as aforesaid; and every such declaration shall be made before the Registrar-General, if the declarant shall be resident within the boundaries of the City of Adelaide; or if the declarant shall be resident beyond the boundaries aforesaid, and within the Province of South Australia, then before a Justice of the Peace for the said Province; or if the parties be resident in the United Kingdom of Great Britain and Ireland, or in any British possession other than the said Province, or in any foreign place, then in the presence of any of the persons hereinafter appointed respectively as persons before whom the execution of instruments executed beyond the limits of the said Province may be proved.

54. Whenever such transmission shall take place by virtue of the bankruptcy or insolvency of a registered proprietor, an office copy, or other duly certified copy of the appointment of the assignees of the bankrupt or insolvent, or such other sufficient evidence of such appointment as the Registrar-General may require, shall be left with the Registrar-General; and the Register-General shall thereupon enter a memorandum of the particulars of such appointment in the register-book, and upon such entry being made, it shall be lawful for such assignees to transfer to any purchaser or other person, the land, estate, or interest so transmitted as aforesaid; and every memorandum of sale or other instrument for that purpose, executed by
by such assignees in accordance with the provisions of this Act, shall have the same validity and effect as a like instrument would have if executed prior to such transmission by bankruptcy or insolvency by the registered proprietor of such land, estate, or interest: Provided always, that nothing herein contained shall alter or vary the position of the assignees of a bankrupt or insolvent trustee of any land, as between such assignee and any person who may be beneficially interested in any land, of which such insolvent trustee is the registered proprietor; but the rights of such persons (if any), as between him and such assignees, in respect of such land, shall remain entirely unaffected, notwithstanding the insolvency of the registered proprietor of the said land; and the said insolvent shall transfer the said land to the persons beneficially interested therein, and shall do and execute all acts which may be necessary for nominating a new trustee or new trustees of the said land, and carrying into effect any trusts affecting the said land at the date of his insolvency.

55. Whenever a female proprietor, entitled to any estate or interest affecting any land under the operation of this Act, shall marry, the Registrar-General, on production of the register of such marriage or other sufficient evidence of the celebration thereof, accompanied by a declaration to be made in manner hereinbefore prescribed, of the identity of the woman named in the register-book, as the proprietor of such estate or interest with the person named in such register of marriage shall enter on the register-book, a memorandum of the day and hour of the production to him, of the register, or other evidence of such marriage, and of the particulars certified to him by such declaration, and shall, when required by such female proprietor or other person claiming through her, enter in the register-book any instrument purporting to transfer or otherwise affect the said land, estate, or interest, in accordance with the provisions of this Act: Provided that every such instrument shall, in all cases when the same is by law required to be acknowledged by such married woman for the purpose of transferring the said land, estate, or interest, be duly acknowledged by such married woman, in the manner hereinafter provided, previously to the same being so recorded by the Registrar-General; and every such entry by the Registrar-General shall state the date and hour of the production of such instrument, and all such other particulars as herein are required to be recorded by the Registrar-General, in the register-book, at the time of entering such instrument; and the Registrar-General shall also make such endorsement as herein is required to be made on the grant, certificate of title, or other instrument, evidencing title to the said land, estate, or interest thereby transferred or affected.

56.  Whenever land, under the operation of this Act, shall be transmitted in consequence of the death of the registered proprietor of such land, no person shall be entitled to obtain a certificate of title of such land, or to sell, transfer, or otherwise affect the said land, until the probate or an office copy of the will of the deceased.
ceased proprietor, or letters of administration, in case the said proprietor shall have died intestate, shall be produced and left with the Registrar-General, for the purpose of recording the same in the register-book, and the Registrar-General shall enter in the register-book, the date of the will and of the probate, or as the case may be, the date of the grant of the letters of administration, the date and hour of the production to him of such will and probate, or letters of administration; and, whenever the same can be ascertained, the date of the death of such proprietor, with such other particulars as the Register-General shall deem necessary.

57. After the expiration of six calendar months from the death of the registered proprietor of any land under the operation of this Act, the executor or administrator of such deceased proprietor, or in those cases where no executor or administrator has been appointed, or where an executor or administrator shall decline to act in the execution of the said will, or shall not reside within the said Province, then the Curator of Intestate Estates may apply to the Registrar-General to issue to him a certificate of title of the said land, and the Registrar-General shall thereupon give notice of the receipt by him of such application, by one advertisement in the South Australian Government Gazette, and two advertisements in at least one newspaper, published in the City of Adelaide; and, unless within fourteen days from the date of the latest of such advertisements, a caveat shall have been entered by, or on behalf of any person claiming the said land, or any part thereof, or any estate or interest therein, by devise or descent, the Registrar-General shall proceed to issue to such executor, administrator, or the Curator of Intestate Estates, as the case may be, a certificate of title of the said land: Provided always, that before the issuing of the aforesaid certificate of title to such executor, administrator, or Curator of Intestate Estates, the outstanding grant or certificate of title shall be delivered up and cancelled, and the Registrar-General shall enter in the register-book a statement of the fact that such outstanding grant or certificate of title has been delivered up by the executor, administrator, or Curator of Intestate Estates, for the purpose of being cancelled, and the date and hour of such delivery thereof. Provided also, that, subject to the power hereby conferred upon any executor or administrator, or upon the Curator of Intestates Estates, of transferring the said land, the rights or interests of any devisee or heir, or of any other person interested in the said land, shall not be affected, in consequence of such certificate of title having been issued to any executor or administrator, or to the Curator of Intestate Estates, except so far as regards any purchaser or mortgagee of the said land, bond fide for valuable consideration, claiming or deriving title from, or under any executor or administrator, or from or under the Curator of Intestate Estates.

58. After any certificate of title shall be issued by the Registrar-General to the executor or administrator of a deceased proprietor of any land, or to the Curator of Intestates Estates, under the provisions contained
contained in this Act, such executor, or administrator, or the Curator of Intestates Estates, shall have and exercise the like power of disposition over the land mentioned in such certificate of title as he is by law entitled to exercise over any personal estate belonging to the testator or intestate, which may be vested in him as such executor or administrator, or as the Curator of Intestates Estates is by law entitled to exercise over the personal estate of intestates, under the provisions of an Ordinance of the Governor and Legislative Council of South Australia, No. 12 of 1848, intituled "An Ordinance for the better preservation and management of the estates of deceased persons in certain cases."

59. Subject to such disposition of the said land, as hereinbefore mentioned, by an executor, or administrator, or by the Curator of Intestate Estates, it shall be lawful for the heir-at-law, or devisee of a deceased proprietor, at any time to apply to the Supreme Court, or a Judge thereof, by motion or petition, in a summary way, to make an order for the Registrar-General to issue to such heir-at-law, or devisee, a certificate of title of the land which may have descended or have been devised to such heir-at-law or devisee, and the Supreme Court, or a Judge thereof, shall make such order therein as may seem proper, and may thereby direct any caveat to be entered for the protection of the interests of such other persons (if any) as may be interested in the said land, and may also direct the costs of such application to be borne and paid out of the estate of the said deceased proprietor, or by such other person, or in such other manner as the Court may think just: and such order shall be left with the Registrar-General who shall enter the particulars thereof in the register-book, and shall forthwith give effect to the said order by complying with the directions therein contained: Provided always, that in any case where the executor or administrator of any deceased proprietor, or the Curator of Intestate Estates, shall, at the time when the probate or office copy of the will of the deceased proprietor is produced and left with the Registrar-General for the purpose of being recorded in the register-book, by any writing authorize the Registrar-General to issue a certificate of title of the said land to the heir-at-law, or devisee, of the deceased proprietor of the said land; the Registrar-General shall comply with the aforesaid authority by issuing such certificate of title to the heir-at-law, or devisee, of the deceased proprietor of the said land, without requiring such order to be obtained for that purpose, as hereinbefore directed; and the Registrar-General shall, thereupon, make such entry in the Register Book relating to the issuing of the said certificate of title to such heir-at-law, or devisee, as he is hereby required to make at the time of his issuing a certificate of title of the said land to the executor or administrator of a deceased proprietor.

60. For the purposes of registration under the provisions of this Act, of an estate or interest in or upon any land, or of any instrument affecting or relating to the said land, or on any application for the issuing by the Registrar-General of a certificate of title under the provisions of this Act, it shall be lawful for the Supreme Court, or a Judge thereof, in its equitable jurisdiction, upon motion or petition, to exercise all such powers as are conferred, or as may be applicable for Heir-at-law, or devisee may apply to Judge of Supreme Court to order the Registrar-General to issue certificate of title to him. Registrar-General, if authorized by executors, or Curator of Intestate Estates, may issue certificate of title to devisee or heir. Powers of Supreme Court under Statute of the 6th Queen Anne, applicable to registration under this Act.
for any of the purposes hereinbefore mentioned, under a Statute passed in the sixth year of the reign of Her Majesty Queen Anne, and intituled "An Act for the more effectual discovery of the death of persons pretended to be alive, to the prejudice of those who claim estates after their deaths."

61. By virtue of every such transfer as is hereinbefore mentioned, the right to sue upon any bill of mortgage, bill of encumbrance, or other instrument, and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity, or damages, shall be transferred so as to vest the same, at law as well as in equity, in the transferee thereof: Provided always that nothing herein contained shall prevent a Court of Equity from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages, in case the transferee shall hold the same as a trustee for any other person.

62. Whenever it is intended that partition should be made by coparceners, joint tenants, or tenants in common, of any land under the operation of this Act, or of any estate or interest in such land, such coparceners, joint tenants, or tenants in common, may execute a memorandum of sale, lease, or other such instrument of transfer as in accordance with the provisions of this Act the nature of the estate or interest may require, purporting to sell, lease, or otherwise transfer, to each or any of such coparceners, joint tenants, or tenants in common respectively, such part of the said land, or their estate or interest in such part of the said land as shall be expressed and described in such memorandum of sale, lease, or instrument of transfer; and upon such memorandum of sale, lease, or other instrument being presented to the Registrar-General, he shall enter the particulars of the same in the register book, and proceed in other respects as is hereinbefore directed for the case of the transfer of a like estate or interest in land under the operation of this Act, and upon such entry being made in the register book, the estate or interest of such coparceners, joint tenants, or tenants in common, in the particular piece of land described in such memorandum of sale, lease, or other instrument, shall pass from such coparceners, joint tenants, or tenants in common, and shall vest in the individual named and described as purchaser, lessee, or transferee, of the estate or interest of such coparceners, joint tenants, or tenants in common, as set forth, limited and described in such memorandum of sale, lease, or other instrument of transfer.

63. Where any attorney, or agent acting under a power of attorney from a person who would himself be entitled to make application to bring any land under the operation of this Act, and to receive certificate of title for the same, shall by such power be authorized to sell or absolutely to dispose of such land, it shall be lawful for such attorney or agent, in pursuance of any contract for the sale of such land, to make a declaration that his principal is so entitled as aforesaid, and to apply on behalf of his principal to bring such land under the operation of this Act, and to receive certificate of title for the same in the name of said principal; and
every instrument dealing with such land in accordance with the provisions of this Act, and signed by such attorney or agent on behalf of his principal shall be valid and effectual for the purposes intended by such instrument, and such land shall be considered to have been properly brought under this Act, notwithstanding the absence of any express authority from the principal to sign such instruments or make such declaration or application: Provided that nothing herein contained shall interfere with any express prohibition to an attorney or agent to bring any land under the operation of this Act.

64. Upon the application of any registered proprietor of lands held under separate grants or certificates of title, and the delivering up of such separate grants or certificate of title, it shall be lawful for the Registrar-General to issue to such proprietor a single certificate of title for the whole of such lands, whenever the same may be done consistently with any regulations at the time being in force, respecting the parcels of land that may be included in one certificate of title, having regard to the descriptions of such parcels of land, and the plans thereof by this Act required to be delineated on such certificate of title; and, upon issuing any such single certificate of title, the Registrar-General shall cancel the several grants or previous certificates of title of such land so delivered up, and shall endorse upon each a memorandum setting forth the occasion of such cancellation, referring to the single certificate of title so issued, in which the land described in such cancelled grants or certificates of title is included.

65. Upon the application of any registered proprietor of land held under a single grant or certificate of title, and the delivering up of such single grant or certificate of title, it shall be lawful for the Registrar-General to issue to such proprietor several certificates of title, each including a separate portion of the land previously held by such proprietor, under such single grant or certificate of title; and the Registrar-General shall, at the same time, cancel such single grant or certificate of title so delivered up, and shall endorse thereon a memorandum setting forth the occasion of such cancellation, referring to each of the several certificates of title so issued in respect to the land described in such cancelled grant or certificate of title.

66. It shall be lawful for the Registrar-General, in case he shall see reasonable cause for so doing, to dispense with the production of any grant, certificate of title, lease, or other instrument, for the purpose of making the endorsement thereon, which by this Act is required to be made, upon the transfer or other dealing with land under the operation of this Act; and the Registrar-General may, in such case, if he shall think proper, require proof to be made, by affidavit or otherwise, of the identity of the person transferring or otherwise dealing with the said land, with the person who is registered as proprietor thereof; and the Registrar-General, on making the entry in the register-book of the particulars of such transfer, or other dealing affecting the said land, shall likewise state in the said entry, that no endorsement of such transfer or other dealing has been made on the duplicate grant, certificate of title, lease, or other instrument, and upon surrender of existing grants or certificates of title, the proprietor may obtain a single certificate for all the land included therein.
upon such entry as aforesaid being made in the register-book, and upon
the endorsement of the said entry, with the date thereof on the instru-
ment purporting to transfer or deal with such land, such transfer or
other dealing shall be as valid and effectual as if the endorsement had
been made upon the duplicate of the grant, certificate of title, or
other instrument.

67. Except as hereinbefore provided in the case of right of pur-
chase covenanted in a lease, no agreement for the sale, lease, or other
dealing with any estate or interest in land under the operation of this
Act to be performed in futuro, shall be entered in the register-book;
but any person claiming an estate or interest in any such land under
any contract or agreement in writing or by transmission, may, by
caveat in the form of the Schedule hereto marked P, or as near
thereof as circumstances will permit, forbid the registration of any
instrument affecting such land, estate, or interest.

68. Upon receipt of any caveat, the Registrar-General shall enter
the particulars thereof in the register-book, and also, if the same be
produced to him for that purpose, on the grant, certificate of title,
lease, or other instrument evidencing title to the estate or interest
affected by such caveat, and if such grant or other instrument, as
aforesaid, be not produced to him, then the Registrar-General shall
give notice of the receipt of such caveat to the person registered as
proprietor in respect to the estate or interest referred to in such
caveat, and to every person presenting for the purpose of registration
any instrument relating to such estate or interest, and such registered
proprietor, or any person claiming estate or interest in the same land,
may, if he think fit, summon the person signing such caveat to attend
before the Judges of the Supreme Court of the said Province, or one
of them, to show cause why such caveat should not be withdrawn;
and it shall be lawful for the said Court, or a Judge thereof, upon
proof that such last-mentioned person has been summoned, to make
such order in the premises, either ex parte or otherwise, as to the
said Court or Judge shall seem fit.

69. Every caveat left, under the provisions of this Act, with the
Registrar-General, shall state therein the name and address of the
person by whom, or on whose behalf such caveat shall be lodged, and
shall contain a sufficient description to identify the land which is
intended to be affected thereby, and the estate or interest (if any),
which shall be claimed by the caveator in the said land; and every
such caveat shall be signed by the caveator, or by his solicitor, known
agent or attorney; and all notices relating to such caveat, or any
proceedings in respect thereof, shall be served, either at the place of
address mentioned in such caveat, or at the office of the solicitor,
known agent or attorney, who shall have signed such caveat; and
such service shall be deemed sufficient service of the notice, as
against all persons who may claim under the said caveat: Provided
always, that it shall be lawful for the Registrar-General, in case he
see fit, to require the form of any caveat to be amended, and, from
time to time, to issue such forms of caveats as he shall deem necessary
for the purpose of carrying into effect the several provisions, matters,
and things, which are intended to be hereby effected or provided for.

70. So
70. So long as any caveat shall remain in force prohibiting the transfer or other dealing with land, the Registrar-General shall not enter in the register-book any memorandum of sale or other instrument purporting to transfer, or otherwise deal with, or affect the land, estate, or interest, in respect to which such caveat may be lodged.

71. Any caveat which may be lodged under the provisions hereinbefore contained may be cancelled by the Registrar-General, upon its being proved to his satisfaction that the estate, interest, or claim of the caveator has ceased, been abandoned, or withdrawn; or that the rights of the parties on whose behalf such caveat may have been lodged are satisfied or arranged; or, in case the Registrar-General shall be satisfied that the nature of the estate, interest, or claim of the caveator, or person on whose behalf the caveat is lodged, is not such as to entitle him to prohibit the sale, or mortgage, or other dealing with the land, estate, or interest referred to in such caveat.

72. In all cases where married women are interested in land under the operation of this Act, it shall be lawful for the Registrar-General, or a Judge of the Supreme Court, or the Master thereof, on the transfer of such land, or an estate or interest therein by such married woman, and whether the instrument of transfer shall embrace or relate solely to land under the operation of this Act, or shall embrace or relate both to land under the operation of this Act, and also land not under the operation of this Act, to take the acknowledgment of such married woman touching the instrument executed by her for the purpose of transferring, disposing of, releasing, surrendering, or extinguishing any estate, right, title, or interest in such land, in like manner as the deed of any married woman is now required to be acknowledged by her before a Judge of the Supreme Court, or the Master thereof; and also to examine her apart from her husband touching her knowledge of such instrument, and ascertain whether she freely and voluntarily consents thereto, in like manner as a Judge of the Supreme Court, or the Master thereof, is now required to examine any married woman touching the deed of any married woman, under the provisions of an Ordinance intituled "An Ordinance to render effectual conveyances by married women, and to declare the effect of certain deeds in relation to dower." And the Registrar-General, or Judge, or Master, [or other person] taking such acknowledgment and examination shall sign a memorandum, to be endorsed on or written at the foot, or in the margin of such instrument, which memorandum shall be in form of the Schedule hereto annexed marked T, or in words to the like effect; and an entry of the said acknowledgment shall be made by the Registrar-General in the register-book at the time when the other particulars relating to the said instrument are directed to be entered in the register-book; and every such instrument so acknowledged by any married woman, and recorded by the Registrar-General in the register-book, shall be as effectual to pass all the estate, right, title, or interest of the married woman by whom the same is executed, in the lands to which the same relates, as if she had been then unmarried.

73. The benefits and liabilities in respect to any covenants or powers under the provisions of this Act shall, in the case of a married
ried woman, extend to and be implied against such married woman and her husband conjointly during coverture.

74. Every Corporation, in lieu of signing the forms of instruments provided by this Act, or such other form as may be sanctioned as aforesaid, may affix the common seal of the said Corporation to such form of instrument; and every such form of instrument shall contain a statement that the common seal of the said Corporation was affixed by the proper officer for that purpose, verified by his signature, in like manner as the contract or deed of such Corporation is usually made and verified.

75. Instruments executed pursuant to the provisions of this Act, if attested by one witness, shall be held to be duly attested, and the execution of any instrument made in accordance with the provisions of this Act, or the discharge of any mortgage or encumbrance, or the transfer or surrender of any lease, may be proved, if the parties executing the same be resident within the boundaries of the City of Adelaide, then before the Registrar-General; if the parties executing the same be not resident within the said boundaries, then before the Registrar General or a Justice of the Peace; if the said parties be resident in the United Kingdom of Great Britain and Ireland, then by the Mayor or other Chief Officer of any Corporation, or before a Notary Public; if the said parties be resident in any British Possession, then before the Chief Justice, Judge of any Superior Court having jurisdiction in such Possession, or before the Governor, Government Resident, or Chief Secretary thereof; if the said parties be resident at any foreign place, then before the British Consular Officer resident at such place; and a certificate of such proof, under the hand and seal of the Registrar-General, or of any such Justice of the Peace, Notary Public, Mayor, or other Chief Officer, Chief Justice, Judge, Governor, Resident, Chief Secretary, or Consular Officer, as the case may be, shall be sufficient evidence that the execution of such instrument had been duly proved.

76. It shall be lawful for the Registrar-General, if he shall think fit, to require the proprietor applying to have any land brought under the operation of this Act, or desiring to transfer or otherwise to deal with the same, or any portion thereof, to deposit, at the Registry Office, a map or plan of such land, and if the said land, or the portion thereof proposed to be transferred or dealt with, shall be of less area than one statute acre, then such map or plan shall be on a scale not less than one inch to two chains; and if such land, or the portion thereof, about to be transferred or dealt with, shall be of greater area than one statute acre, but not exceeding five statute acres, then such map or plan shall be upon a scale not less than one inch to five chains; and if such land, or the portion thereof as aforesaid, shall be of greater area than five statute acres, but not exceeding eighty statute acres, then such map or plan shall be upon a scale of not less than one inch to ten chains; and if such land, or the portion thereof as aforesaid, shall be of a greater area than eighty statute acres, then such map or plan shall be upon a scale of one inch to twenty chains, and such proprietor shall sign such map and shall declare to the accuracy of the same before the Registrar-General, or a Justice of the Peace; and if such proprietor shall neglect
neglect or refuse to comply with such requirement, it shall not be incumbent on the Registrar-General to proceed with the bringing of such land under the operation of this Act, or with the registration of such transfer or lease: Provided always, that subsequent subdivisions of the same land may be delineated on the map or plan of the same, so deposited, if such map be upon a sufficient scale, in accordance with the provisions herein contained, and such proprietor shall certify the correctness of the delineation of each such subdivision, by declaration in manner prescribed for the case of the deposit of an original map.

77. No action of ejectment shall be brought against a registered proprietor for recovering the possession of land under the operation of this Act, except in the case hereinafore provided of a mortgagee or encumbrance bringing such action against a mortgagor or encumbrancer, and in the case of a registered proprietor or lessor bringing an action of ejectment against the lessee or tenant claiming the said land under any lease.

78. In case any person shall have been registered through fraud as proprietor of any land or an estate, or interest in any land, the person defrauded, or any person claiming through him, may at his election, apply by petition, in a summary way, to the Supreme Court in its Equitable Jurisdiction, for the recovery of the said land, estate, or interest, from such fraudulent proprietor, or the person (not being a purchaser or mortgagee bona fide for valuable consideration) claiming under such fraudulent proprietor; or the person so defrauded, or any person claiming through him, may bring and prosecute an action at law in the Supreme Court for the recovery of damages against such fraudulent proprietor, or the person (other than as aforesaid) claiming under such fraudulent proprietor.

79. In case the person so defrauded shall apply to the Supreme Court, as hereinafore provided, for the recovery of the said land, estate, or interest, it shall be lawful for the said Court to make an order for cancelling or altering any entry in the register-book relating to the said land, estate, or interest, and substituting any entry in lieu thereof; and directing and ordering such other acts and instruments to be done and executed as such Court shall, under the circumstances, deem necessary and just: And the Registrar-General shall give effect to the said order by making the necessary entries directed to be made in the register-book relating to the said land, estate, or interest: Provided always, that nothing in this Act contained shall be interpreted to subject to any action of ejectment, or for recovery of damages, any purchaser or mortgagee bona fide for valuable consideration, of any land under the operation of this Act, although his vendor or mortgagor may have been registered as proprietor through fraud or error, or may have derived from or through a person registered as proprietor through fraud or error.

80. Any person who may, by the provisions of this Act, be prevented from bringing an action of ejectment for the recovery of land from the registered proprietor thereof, and any person who may have been so defrauded as aforesaid, and shall elect to bring an action-at-law for
for the recovery of damages against such fraudulent proprietor of any
land, or against the person (other than as aforesaid), claiming under
such fraudulent proprietor, or any person injured or otherwise dam-
nified in consequence of an error or mistake arising from any entry in the
register-book, in respect of which right of action is hereby given
against the Registrar-General, may bring and prosecute an action-at-
law in the Supreme Court for the recovery of damages against the
person who was the registered proprietor of the said land, estate, or
interest at the time when the act, error, mistake, or other dealing
affecting the said land or easement, and occasioning the said injury,
damage, or loss to the plaintiff to the said action was made, done,
committed, or took place, but no greater amount of damages for the
loss of the said land shall be recovered in the said action than the
estimated value of such land at the time when the aforesaid act, error,
mistake, or other dealing affecting the said land was originally made
done, committed, or took place.

81. In case the registered proprietor of the said land, estate, or
interest, against whom such action for damages is directed to be
brought as aforesaid, shall be dead, or shall have been adjudged
insolvent, then, in such case it shall be lawful to bring such action
for damages against the Registrar-General, as such nominal defend-
ant, as hereinafter provided, for the purpose of recovering the amount
of the said damages and costs against the Assurance Fund herein-
before described: Provided that the Assurance Fund shall not be
liable for payment of any damages after the expiration of six years,
to be computed from the time when the act, error, mistake, or other
dealing affecting the said land or easement, and occasioning the said
injury, damage, or loss to the plaintiff to the said action was made,
done, committed, or took place, and the Treasurer of the said
Province upon receipt of a certificate of the Chief Justice of the
Supreme Court, and of a warrant under the hand of the Governor,
as hereinbefore provided, shall pay the amount of such damages and
costs, and charge the same to the account of the Assurance Fund.

82. Every action which shall be brought by any person to recover
damages for or by reason of any loss or damage occasioned by any
omission, mistake, or misfeasance of the Registrar-General, or any of
his officers or clerks in the execution of their respective duties under
the provisions of this Act, shall be brought against the Registrar-
General as the nominal defendant; and in case in any such action
the plaintiff recover final judgment against such nominal defendant,
then, upon the application or motion of such plaintiff, the Chief
Justice of the Supreme Court shall and he is hereby directed to
certify to the Treasurer of the said Province the fact of such judg-
ment having been recovered, and the amount of damages and costs
recovered, and thereupon or before the expiration of two calendar
months after such judgment is so certified, the said Treasurer, upon
the receipt of a warrant under the hand of the Governor counter-
signed by the Chief Secretary of the said Province, shall pay the
amount of such damages and costs to the person recovering the same,
his executors or administrators, and shall charge the same to the
account of the assurance fund hereinbefore described: Provided
always, that notice, in writing, of every such action and of the cause
thereof
thereof shall be served upon the Attorney-General of the said Province, and also upon the Registrar-General, one calendar month at least before the commencement of such action: Provided also, that the Registrar-General shall not be personally chargeable upon any judgment recovered as aforesaid, nor shall any process or notice in or relating to any such action (except as aforesaid) be served upon the Registrar-General, but all such processes and notices shall be served upon the Attorney-General of the said Province for the time being.

83. If in any such action judgment be given in favor of the nominal defendant, or the plaintiff discontinue, or become nonsuit, the plaintiff shall be liable to pay the full costs of defending such action, and the same, when taxed, shall be levied in the name of the nominal defendant by the like process of execution as in other actions on the case.

84. If any grant, certificate of title, or other instrument affecting land under the operation of this Act, or any entry, memorandum, or endorsement in or upon any such instrument shall be fraudulently or wrongfully obtained from, or procured to be made or issued by the Registrar-General, it shall be lawful for the Registrar-General to summon before him the person who shall have so fraudulently or wrongfully obtained the same, or procured the same, to be made or issued as hereinbefore mentioned, and in case the person having been so summoned shall not attend before the Registrar-General at the time appointed, having no lawful impediment to be notified to the Registrar-General at the time so appointed as aforesaid, the Registrar-General may apply to a Judge of the Supreme Court to issue a warrant authorizing and directing some person to be therein named for that purpose, to apprehend and arrest the person so summoned to attend before the Registrar-General, and to bring such person before a Judge or the Supreme Court for examination, and such Judge shall thereupon issue such warrant for that purpose.

85. In case it shall be shown by affidavit, to the satisfaction of the Registrar-General, that the person to whom a summons ought to be directed, as hereinbefore mentioned, is keeping out of the way and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the Registrar-General to order, by endorsement upon the summons, that the delivery of a copy of such summons to the wife or servant, or some adult inmate of the house or family of the person at his usual or last known place of abode or business and explaining the purport thereof to such wife, servant, or inmate shall be equivalent to personal service, and in every such case the service of such summons in pursuance of such order shall be deemed and taken to be of the same force and effect to all intents and purposes as if the party to whom such summons was directed had been personally served there with.

86. That...
86. That upon the appearance before the Registrar-General or Court, or Judge, of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the Registrar-General, or Court, or Judge, to examine such person upon oath; and, in case the same shall seem proper, to order such person to deliver up to the Registrar-General such grant, certificate of title, or other instrument as aforesaid; and upon refusal or neglect by such person to deliver up the same within a time to be named for that purpose in such order, the Registrar-General shall issue to the proprietor of the said land such grant, certificate of title, or other instrument as is herein provided to be issued in the case of any grant or certificate of title being lost, mislaid, or destroyed; and the Registrar-General shall enter in the register book notice of the issuing of the said grant, certificate of title, or other instrument, and the circumstances under which the same was issued, and such other particulars as having regard to the estate or interest of the registered proprietor of such land he may deem necessary to be entered therein.

87. If the person who is charged with having so fraudulently or wrongfully obtained from, or procured to be made, or issued by the Registrar-General such grant, certificate of title, or other instrument, or such entry, memorandum, or endorsement as is hereinbefore mentioned, shall be proved to the satisfaction of the Registrar-General or Court, or Judge, to have absconded, so that the Judge's warrant or summons of the Registrar-General cannot be served upon him, the same proceedings may then be taken as if such person had been duly summoned or been brought up by virtue of a warrant, as aforesaid, and had refused or neglected to deliver up such grant, certificate of title, or other instrument.

88. In every proceeding, under this Act, relating to any summons, examination, or warrant, it shall be lawful for the Registrar-General, Court, or Judge, to give or withhold to or from either of the parties who may attend any such summons, examination, or warrant, his reasonable costs and expenses, and shall direct by whom such costs and expenses are to be borne and paid.

89. In case such costs and expenses shall not be paid, pursuant to the direction for payment thereof, the amount of such costs and expenses shall be levied by distress; and the Registrar-General or Judge shall issue his warrant of distress accordingly; and the sum therein directed to be levied shall be levied by distress, and sale of the goods and chattels of the party liable to pay the same and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrainted.

90. No distress, levied by virtue of this Act, shall be deemed unlawful, nor shall any person making the same, be deemed a trespasser on account of any defect or want of form in the application, warrant
warrant of distress, or other proceeding relating thereto, nor shall such person be deemed a trespasser ab initio, on account of any irregularity afterwards committed by him; but all persons aggrieved by such defect or irregularity, may recover full satisfaction for the special damage in an action on the case.

91. The Registrar-General shall not, except as hereinbefore is provided, be subject to be sued or prosecuted by any person whomsoever on account of any act done or default made by him in his character as Registrar-General; and the person, goods, or lands of the Registrar-General, shall not be liable to execution of any legal process by reason of any act or default made or done by him in his character of Registrar-General, but he shall be indemnified out of the assurance fund or out of the General Revenues of the said Province, in case such assurance fund shall prove to be insufficient, in respect of all losses, costs, and damages, which may be incurred or recovered by any person under any action or suit brought or prosecuted under the provisions of this Act, touching or concerning any matter or thing relating to the execution of this Act and the powers hereby granted.

92. Every person summoned to attend before the Registrar-General as a witness, in respect of any instrument required to be produced, or any act, matter, or thing, by this Act authorized to be done, proceeded with, or inquired into by, or before the Registrar-General, shall have his necessary expenses tendered to him in like manner as is now by law required upon service of a subpoena to a witness in an action at law.

93. It shall be lawful for the Registrar-General to charge and recover such fees as shall be appointed by the Governor of the said Province, by and with the consent of the Executive Council, not in any case exceeding the several fees specified in the Schedule hereto, marked U.

94. All the clauses in this Act contained which relate to future proceedings for bringing land under the operation of this Act, and which relate to the validity and effect of certificates of title of land to be hereafter issued by the Registrar-General shall, so far as the same shall be deemed necessary or requisite for giving validity and effect to, or for confirming any certificate of title of land which may have been already brought under the operation of the Real Property Act, or issued by the Registrar-General, be adjudged and held to be retrospective and to have the like validity, operation, and effect, as if the said clauses had been inserted in the Real Property Act when the same was originally passed by the Governor-in-Chief and Parliament of South Australia.

95. The right to register and deposit any instrument required to be registered under the provisions of this Act, or to enter a caveat affecting any land, shall be exercised by the person claiming under or in
in respect of such instrument or caveat, or by his solicitor; and whenever such instrument shall be left with the Registrar-General for the purpose of being registered under the provisions of this Act, such instrument shall be certified by the person registering the same as correct for the purposes of registration under the Real Property Act, and a statement to that effect shall be endorsed on such instrument and signed by the person so registering the same; and the Registrar-General shall not be required to compare the said instrument, when the same is left with the Registrar-General, with the duplicate thereof in the custody of the person registering such instrument; and shall not incur or become subject to any liability, action, or other proceeding in consequence of any error or mistake in the duplicate thereof, but the person who shall falsely or negligently certify to the correctness of any instrument on registering the same, shall incur therefor a penalty not exceeding Fifty Pounds: Provided always, that the aforesaid penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified instrument or any duplicate thereof, from recovering damages against the person who shall have certified such instrument and the duplicate thereof to be correct for the purpose of registration.

96. It shall be lawful for the Judges of the Supreme Court to re-adjust, fix, and determine the remuneration, and the rate, or mode, or kind of remuneration to be in future charged and received by the Practitioners of the Supreme Court for conveyancing, or other business, regulated or affected by the provisions of this Act, and to frame, as far as may be practicable, a scale of fees and emoluments for such business; and such scale of fees shall be laid before both Houses of the said Parliament within fourteen days after the same shall have been framed, if the said Parliament shall be then sitting, or if not sitting, then within fourteen days after its next sitting; and such remuneration, fees, or emoluments as shall be fixed, or determined, or allowed by the Judges of the Supreme Court, for such business as aforesaid, if not disallowed by the said Parliament, shall be chargeable by the Practitioners of the Supreme Court for such business accordingly, with such power of varying the same as from time to time the Judges for the time being shall approve.

From the Right Hon. Sir E. B. Lytton, Bart., M.P., to Governor Sir Richard Graves MacDonnell, C.B.

No. 17.

Sir—I have received your Despatch, No. 291, of the 17th January last, forwarding an authenticated copy of an Act passed by the Legislative Council and House of Assembly of South Australia, and to which you have assented in Her Majesty's name, intituled “An Act to amend the Real Property Act.” I have to acquaint you that I have laid this Act before the Queen, and that it will be left to its operation.

At the same time I have to point out to you, that this Act does not repeal the 35th clause of the previous Registration Act of your Government, No. 15 of 21st Victoria, the illegality of which was adverted to in Lord Stanley's Despatch No. 15, of the 10th May, 1858.

I have, &c.,

CARNARVON,

In the absence of Sir E. B. Lytton.
SCHEDULES REFERRED TO.

E

Bill of Encumbrance for securing a sum of Money.

I, A.B., being registered as the proprietor of an estate (here state nature of the estate or interest), subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in (here describe the land by a sufficient description for identifying it with the description in the grant, certificate of title, or instrument relating to the same, appearing in the register-book, and referring to the original grant of such land by the Crown).

And desiring to render the said land available for the purpose of securing to and for the benefit of C. D. the sum of money hereinafter mentioned, do hereby encumber the said land, for the benefit of the said C. D., with the sum of £, to be raised and paid at the times and in the manner following, that is to say—(here state the times appointed for the payment of the sum intended to be secured, the interest, if any, and the events on which such sum shall become and cease to be payable; also, any special covenants or powers, and any modifications of the powers or remedies given to an encumbrance by the Real Property Act): And subject as aforesaid, the said C.D. shall be entitled to all powers and remedies given to an encumbrance by the Real Property Act.

In witness whereof I have hereunto signed my name this day of in the presence of E.F.

F

Bill of Encumbrance for securing an Annuity.

I, A.B., being registered as the proprietor of an estate (here state nature of the estate or interest) subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in (here describe the land by a sufficient description for identifying it with the description in the grant, certificate of title, or instrument relating to the same appearing in the register-book, and referring to the original grant of such land by the Crown).

And desiring to render the said land available for the purpose of securing to and for the benefit of C.D. the annuity or rent-charge hereinafter mentioned, do hereby encumber the said land for the benefit of the said C.D., with the annuity or rent-charge of £, to be raised and paid at the times and in the manner following, that is to say—(here state the times appointed for the payment of the annuity, and the events on which such annuity shall become and cease to be payable; also, any special covenants or powers, and any such modifications of the powers or remedies given to an encumbrance by the Real Property Act): And subject as aforesaid, the said C.D. shall be entitled to all powers and remedies given to an encumbrance by the Real Property Act.

In witness whereof I have hereunto signed my name this day of in the presence of E.F.

K

Nomination of Trustees.

I, A.B., being registered as the proprietor of an estate (here state nature of the estate or interest), subject, however, to such encumbrances, liens, and interests, as are notified by memoranda endorsed hereon, in that piece of land situated in (here describe the land by a sufficient description for identifying it with the description in the grant, certificate of title, or instrument relating to the same appearing in the register-book.
book, and referring to the original grant of such land by the Crown, I do hereby transfer all my estate or interest in the said land above described to C.D. of , E.F. of , and G.H. of , as trustees of the same, under the provisions of the Real Property Act.

In witness whereof I have hereunto signed my name this in the presence of

Accepted—C.D., E.F., G.H., in the presence of

Schedule of Trusts.

It is agreed that the above-described land shall be held by the above-named trustees upon the trusts following, that is to say—

T

Certificate of Registrar-General upon acknowledgment of instrument to be made by a Married Woman under clause

I certify that this instrument was this day produced before me the undersigned (R. R. T., Registrar-General, Judge, or Master of the Supreme Court) of South Australia (or A. B., a Commissioner duly authorized, in pursuance of an Ordinance of the Governor, with the advice and consent of the Legislative Council of South Australia, in that behalf for taking acknowledgments of married women, or E. F., the Commissioner named in the Commission hereunto annexed, or G. H., Judge, Mayor, or Chief Magistrate of ), and was acknowledged by

the wife of therein named, being personally present before me, and being of full age and competent understanding, to be her act and instrument; previous to which acknowledgment the said was being examined by me, separately and apart from her husband, touching her knowledge of the contents of the said instrument and her consent thereto, declared that she fully understood the nature and effect thereof, and that the same was freely and voluntarily executed by her.

As witness my hand this in

R. R. T., Registrar-General.

U

Fees payable for the performance of the several acts, matters, and things herein specified.

For the bringing land under the operation of this Act; to be paid to the Lands Titles Commissioners, over and above the cost of all advertisements herein prescribed, to be in such case published:

<table>
<thead>
<tr>
<th>Description</th>
<th>£</th>
<th>s.</th>
<th>d.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the title consists of a Land Grant only</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>When the title is of any other description</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Receipt and noting of caveat</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>Registering memorandum of sale, bill of mortgage, bill of encumbrance, or nomination of trustees</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>For registering transfer of mortgage, or of encumbrance, or release of mortgage or encumbrance, or the transfer or surrender of a lease</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Registering declaration of ownership, taken by transmission</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>For every certificate of title issued to proprietor for balance of land left upon a transfer of portion of the land included under a former grant or certificate of title</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>For certificate of title issued under other circumstances</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>For every power of attorney</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>For every registration abstract</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>For cancelling power or registration abstract</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>For every revocation order</td>
<td>0</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>For every search</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>For certified copy, first five folios, per folio of seventy-two words</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>And for every folio, or part of folio, after first five</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>For every instrument drawn on parchment</td>
<td>0</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>For every map or plan deposited</td>
<td>0</td>
<td>5</td>
<td>0</td>
</tr>
</tbody>
</table>